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In the Supreme Court of the United States

October Term, 1984

JOAN L. MURPHY, LORRAINE R. MASON, EDITH L. McGRODY, MARIE PEKALA, HENRIETTA ELLIOTT, CATHERINE BERES, VIRGINIA KNOWLES, ANN JACYSZYN, PEGGY FELMEY, ELEANOR NEYER, DORIS YOCUM AND ELIZABETH McNASBY, on Behalf of Themselves and All Others Similarly Situated,
Appellants

v.

COMMONWEALTH OF PENNSYLVANIA HUMAN RELATIONS COMMISSION AND CROWN CORK AND SEAL COMPANY, INC., AND SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO, CAN WORKERS' UNION, LOCAL 266, a/k/a SHEET METAL PRODUCTION WORKERS UNION LOCAL No. 266,
Appellees

APPELLEES' MOTION TO DISMISS OR AFFIRM

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STATEMENT OF QUESTIONS PRESENTED

1. Were the appellants, who did not file individually, and exercise their right to file a complaint, deprived of due process when the commissioners complaint was found to be insufficiently particular?

2. Is the requirement that a complaint be filed in a timely fashion, a legitimate state requirement and not a violation of equal protection?

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STATUTE:

Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, Pa. Stat. Ann. Tit. 43:

§9 4,

§§951-964 .....2, 3,

STATEMENT OF THE CASE

1. Procedural History

In February of 1970, eleven women who worked a Crown Cork and Seal, Inc. ("Crown" or "The Company") went to the Philadelphia Regional Office of Pennsylvania Human Relations Commission ("Commission" o "PHRC") to complain about sex discrimination at Crow (A 114-119*). They also complained that their union Local 266 of the Sheet Metal Production Workers Union was acquiesing in the discrimination. In April 1970 on of these women, Mary Martin, filed a formal complaint (A 110-111). In October of 1970 she withdrew her complain (A 123). In December of 1970, based in part on the in formation provided by Martin and others, the Commission of its own initiative, and without an actual named com plainant, filed a Commissioners' complaint against th company and the union. This complaint alleged unlawfu patterns or practices of sex discrimination in recruitmen hiring, initial job assignment, promotions, overtime, lay offs and recall from layoffs. This complaint has variousl been referred to throughout the ensuing litigation as th "original" complaint, Docket No. E-4027, the Commissio initiated complaint, the Commissioners' complaint and th PHRC complaint. It will hereinafter be referred to as th Commissioners' Complaint (A 141).

*All references to A are to the Appendix provided by Ap pellants.

Elizabeth McNasby, who also worked at Crown, a complaint on June 11, 1971, at Docket No. E-4249 (inafter "McNasby Complaint") in which she alleged the Respondents "consorted in the layoff of the Comp ant because of her sex, female, and have prevented h well as all other females, from enjoying equal job o tunities at Crown Cork and Seal Company" (A Only McNasby's name was on this complaint, and the reference to other similarly situated females was the c that the Company ". . . [has] . . . prevented . . . all females from enjoying equal job opportunities" (A 1

In addition to providing for individual filing of plaints, the Pennsylvania Human Relations Act ("A Act of October 27, 1955, P.L. 744, *as amended*, Pa. Ann. Tit. 43 §951-964, also provides for the filing "Commissioners" complaint. This is a complaint wit Commission as the named plaintiff. "The Comm upon its own initiative or the Attorney General, ma like manner, make, sign and file such complaint" 4 959 (a).

The only definition of a Commissioners' com came in the opinion of the Pennsylvania Supreme below. The Court noted that a "Commissioners" plaint is filed *on behalf of the Commonwealth*, as op to individual claimants, with the intent of vindicati public interest . . ." (A 96).

On October 16, 1974, the Supreme Court of sylvania handed down a decision in *Pennsylvania H Relations Commission v. U.S. Steel Corp.*, 458 Pa 375 A.2d 910 (1974). This opinion stated that a Co sion complaint which alleged, merely, that an em had, in the past, and continued to engage in emplo practices which discriminated on the basis of sex, ra

national origin did not satsify the particularity
ments of the Pennsylvania Human Relations Act
Act of October 27, 1955, P.L. 744, *as amended*,
Ann. Tit. 43 §951-964. The Commissioners'
filed in December of 1970 was substantially sim
one dismissed in *U.S. Steel*.

One year later, in response to the *U.S. Steel*
mission investigators sought out Eleanor Neyer,
phy, Sarah Cooper, Margaret Felmey, Lorrain
Virginia Knowles, Doris Yocum, Edith McGro
Pekala, Theresa Cheplick, Henrietta Hun
Jacyszyn and Theresa Reed, and gathered the
allegations against Crown and drafted an exter
plaint. This complaint was to "amend" the 1
missioners' complaint. Unfortunately, with the
of Reed, all of the named Complainants no long
or held recall rights with the Company, at the t
filing (in October 1975) or ninety days before a
by the statute, 43 P.S. 959 (g). This was nearly
after the filing of the Commissioners' complain
eral years after any of the named Complainar
Reed, had worked at Crown (A 91 n. 4). Howe
time of the filing of the 1975 complaint, 118 fer
employed or possessed employment rights at
13).

The Commissioners' complaint (1970), the
complaint (1971) and the amended complai
were joined for purposes of administrative pro
3). A finding of probable cause was made by C
staff on April 19, 1976.

In February of 1977, the Company filed a
dismiss the amended complaint, arguing, *inter al*
Commissioners' complaint lacked specificity (A

Commission reserved its ruling on this motion pendi completion of the public hearing. Hearings commenced October 30, 1978. Thereafter, 37 days of hearings, resu ing in 6,000 pages of transcribed testimony were held fore a panel of Commissioners (A 27).

On September 29, 1981, the Commission issued document entitled findings of fact, conclusions of la opinion and final order (A 1-56), which found that spondent Crown engaged in a pattern and practice of d crimination based on sex (female) of applicants and e ployees in hiring, job assignment, job transfer, compen tion, layoff and recall from layoff on a continuing ba (A 22).

Of the three complaints filed, the Commissione complaint (1970) was found to be insufficient as to p ticularity and therefore a "nullity" (A 28). The McNas complaint (1971) sufficient only for McNasby (A 3 and the amended complaint (1975) sufficient as a cl action and Original Complaint unto itself (A 29). T Commission found that the ninety day statute of limitati as required in §9 of the Pennsylvania Human Relations (Act), barred all but one of the (1975) named Compla ants, Reed, from recovery (A 31).

The Commission's order required, among ot things, that Crown integrate its seniority system (A 5 and pay full back wages to McNasby (A 49), and par back wages to all females employed or who possessed ployment rights at Crown from June 30, 1975 to Decem 31, 1975 (A 49). Local 266 was ordered to pay back d and reinstatement fees (A 52).

On October 9, 1981, a request for reconsiderat was filed with the Commission, primarily contesting

dismissal of the Commissioners' complaint. The r
was granted and further argument was submitted (A
On May 10, 1982, the Commission issued a supplem
opinion and order, affirming its original order with
modifications (A 59).

On June 7, 1982, most of the thirteen wome
were named on the 1975 complaint appealed to Co
wealth Court, along with Elizabeth McNasby. The
and Crown intervened. Commonwealth Court af
the Human Relations Commission's order on Sept
28, 1983. The women petitioned the Pennsylvan
preme Court for allocatur, which was granted. On J
9, 1985 the Pennsylvania Supreme Court affirm
Commonwealth Court decision, with one dissent
102). This appeal followed.

ARGUMENT

Appellants, Who Chose Not To Exercise Their Right To File Individual Complaints, Were Not Deprived of Due Process When the Commissioners' Complaint Was Found To Be Insufficiently Particular

In the Commissioners' 1970 complaint, the particulars of the discriminatory action consisted of a single, short paragraph:

> 3. On or about to wit, December 22, 1970, the complainant alleges that the respondent company engages in unlawful employment practices which are discriminatory with respect to female employes, because of their sex, in hiring, assignment, seniority, transfer, salary, overtime, promotion, denial of training, and layoff. It is further alleged that the respondent union concurs in and aids and abets the discriminatory practices of the respondent company.

The Appellants had the right also to file a complaint separate from the Commissioners' complaint. Appellants, however, chose not to file. Initially, a complaint was filed by Mary Martin, which she later, however, withdrew. After her withdrawal the Commission never heard from her again. No further correspondence from her exists in the record, and she did not testify in any of the hearings. There is no reason to believe that the Commissioners hearing the case ever knew of the existence of Mary Martin or her complaint.

The wide sweeping Commissioners' complaint, drafted next, contained no named Complainants, and when *U.S. Steel* came down, requiring specificity and particularity, the complaint itself was effectively eviscerated. In failing to comply with the statutory requirement of particularity, the Commissioners' complaint failed to state a claim upon which the Commission could act. A complaint does not state a cause of action under Section 9 of the Act unless sufficient particulars are alleged to meet at least the minimum requirements of that section. Under *U.S. Steel,* this complaint failed to meet those minimum standards, and no cause of action was stated. The Commission, of course, is bound by the decisions of the Pennsylvania Supreme Court. It may not ignore the law. *Loyal Order of Moose, Lodge No. 145 v. Pennsylvania Human Relations Commission,* 16 Pa. Commonwealth Ct. 433, 328 A.2d 180, 184 (1974), *aff'd per curiam* 478 Pa. 573, 387 A.2d 470 (1978). Where the Pennsylvania Supreme Court has interpreted a statute, the Commission is bound by that interpretation. *See Perma-Lite of Pennsylvania, Inc. v. Com., Workmen's Compensation Appeal Board,* 38 Pa. Commonwealth Ct. 481, 393 A.2d 1082, 1084 (1978).

The McNasby complaint contained the same flaw with regard to all but McNasby.

At no time did any one, except McNasby, ever step forward and file a complaint personally with the Commission. Despite the assertions of the Appellants, the withdrawn Mary Martin complaint did not suffice. Any one of the Appellants could have filed up until 90 days after the date their employment relationship with Crown ended. For most, the latest date for filing, would have been in 1973. This option was available and not taken.

In arguing that the particularity requirement of Section 9(a) of the Act violates the fourteenth amendment right to due process, Appellants rely almost exclusively on *Logan v. Zimmerman Brush,* 455 U.S. 422 (1982). In *Logan,* the complainant filed an individual complaint with the Illinois Fair Employment Practices Commission. The Commission failed to schedule a hearing within the statutory period and the complaint was dismissed. The Illinois Supreme Court upheld that dismissal and this Court reversed, holding that Logan's due process rights were violated. This case is not controlled by *Logan.*

The difference between *Logan* and the Appellants here is that *Logan* filed a complaint. The Appellants, with the exception of McNasby, did not. In *Logan,* this Court stated that: "this is not to suggest, of course, that the State must consider the merits of the claim when the claimant fails to comply with a reasonable procedural requirement, or fails to file a timely charge." 455 U.S. at 434 n. 7. A statute of limitations is a reasonable procedural requirement for a state to have. *Commonwealth v. J & R Equipment Rental Co. Inc.,* 28 Pa. Commonwealth Ct. 558, 368 A.2d 1389, 1391 (1977), *appeal dismissed* for want of a federal question, 439 U.S. 804. The Pennsylvania Human Relations Act has a 90 day statute of limitations which requires that "any complaint filed pursuant to this section must be so filed within ninety days after the alleged action of discrimination," Pa. Stat. Ann. Tit. 43, §959. This Court held in *Logan*:

> Obviously, nothing we have said entitles every civil litigant to a hearing on the merits in every case. The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statute of limitations, cf. *Chase Securities Corp.*

> *v. Donaldson,* 325 U.S. at 314-316, 89 L.Ed. 1628, 65 S.Ct. 1137, or, in an appropriate case, filing fees. *United States v. Kras,* 409 U.S. 434, 34 L.Ed. 2d 626, 93 S.Ct. 631 (1973). And the State certainly accords due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule. *Hammond Packing Co. v. Arkansas,* 212 U.S. at 351, 53 L.Ed. 530, 29 S.Ct. 370; *Windsor v. McVeigh,* 93 U.S. at 278, 23 L.Ed. 914.

455 U.S. at 437.

The case at bar is like *Baldwin County Welcome Center v. Brown,* 104 S.Ct. 1723 (1984), wherein the employee/respondent failed to properly and timely file a complaint with the United States District Court after receiving her right to sue letter from Equal Employment Opportunity Commission. This Court, *per curiam,* found she was barred from pursuing her complaint, despite the employer's failure to show prejudice and despite the fact that she did file her right to sue letter timely, saying "in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded law." *Baldwin,* 104 S.Ct. at 1726, quoting *Mohasco Corp. v. Silver,* 447 U.S. 807, 826 (1979). Like the employee in *Baldwin,* Appellants here did not "trigger" any procedural due process rights. The Appellants' attempt to attach a protected property interest to the Commissioners' complaint also fails because the Commissioners' complaint was improperly pled, and was filed on behalf of the Commonwealth and represented the public interest and not their individual interests.

In *Davis v. Passman,* 442 U.S. 228 (1979), this Court stated that a "cause of action is a question of whether a particular plaintiff is a member of the class of litigants that

may, as a matter of law, appropriately invoke the power of the court." *Id.* at n. 18. The class of litigants in the instant case were those who suffered an injury because of discriminatory practices within ninety days of filing a valid complaint. The Appellants, minus, McNasby, are not in that class.

Appellants are more akin to the employees in *United Air Lines, Inc. v. Evans,* 431 U.S. 553 (1977). This Court, in *Evans,* foreclosed claims based solely upon the residual effects of discriminatory conduct which were not made the subject of a timely charge. In the case at bar, eleven of the named Complainants on the 1975 complaint alleged that discriminatory conduct by the Respondent occurring in 1971-1974, caused them injury. However true this may be, their claims were foreclosed and the Commission had no choice but to deny relief. Of all the Appellants, only McNasby suffered any injury because of discriminatory conduct by Crown Cork & Seal, or Local 266, within ninety days of the filing of the 1975 complaint. Most of them had left the employ of Crown, around 1970 although Jacyszyn left in 1966.

Nothing in *Logan,* 455 U.S. 422 (1982), requires the state to consider the merits of a claim when a timely charge has not been filed. This case is also distinguishable from *Cleveland Board of Education v. Laudermill,* 53 U.S.L.W. 4306 (U.S. March 19, 1985) (Nos. 83-1362,1363, 6392), for the same reasons. The *Laudermill* complainants filed in a timely fashion; their entitlement to procedural due process was not in question.

Appellants were clearly not deprived of a protected property interest since they failed to gain that entitlement in the first place.

The Requirement That a Complaint Be Filed in a Timely Fashion Is a Legitimate State Requirement, and Is Not a Violation of Equal Protection

---

Appellants rely on *Logan,* 455 U.S. 422 (1982), in their contention that they have been denied equal protection saying that there is no difference between them and the 118 females who did have their claims heard on the merits. This misses the point. There is a major difference; the Appellants' claims were not filed while they still had an employment relationship with Crown. The 118 females who had their claims heard on the merits still had an employment relationship with Crown.

It may be true that this creates two classes of people; those who filed timely and those who did not. But, merely because a requirement creates two classes of people does not automatically make it a violation of the equal protection clause. The state has an interest in the timely disposition of claims, *Logan,* at 444 (Powell, J. concurring).

The Pennsylvania Supreme Court has specifically dealt with this issue in *Commonwealth v. J & R Equipment Rental Co., Inc.,* 28 Pa. Commonwealth Ct. 558, 368 A.2d 1389, 1391 (1977), *appeal dismissed,* 439 U.S. 804 (1978). Their petitions for review with the Department of Revenue had to be filed within sixty days. Those persons mailing their petitions on the 59th day were separated into two groups, those whose petitions were received by the Department of Revenue on the 60th day and those whose petitions were received on the 61st day. The latter group filed untimely petitions which were unacceptable. The court held that equal protection was not denied by this procedure which is applied to legal proceedings in

which a particular person is affected because that procedure would also be applied to any other person under similar circumstances and conditions. The case at bar is similar to *Inda v. United Air Lines, Inc.*, 565 F.2d 554 (9th Cir. 1977), *cert. den.* 435 U.S. 1007 (1977). The claimants in *Inda* did not file timely charges with EEOC, but argued that the timely filing by *others* on the same issue tolled the statute of limitations for them. The Court found otherwise.

> We cannot agree.
>
> . . .
>
> Title VII painstakingly spells out the procedure by which one obtains a right to sue on his own behalf and the times within which certain steps must be taken. In *United Air Lines v. Evans*, 553 U.S. 431, 97 S.Ct. 1885, 52 L.Ed. 2d 571 (1977), the Supreme Court strictly enforced these provisions, holding that Evans' claim was barred by her failure to file a timely charge with the EEOC.

Id. at 558.

Like the *Inda* claimants the Appellants failed to file timely complaints. *Logan* did not. *Logan* could claim equal protection, Appellants can not.

CONCLUSION

For all the foregoing reasons, it is requested that t
Court dismiss the appeal for want of a federal questi
and affirm the decision of the Pennsylvania Supre
Court. It is further requested that if the appeal is dismis
and the case is considered as a petition for writ of ce
orari, that the petition be denied for the same reasons.

Respectfully submitted,

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